STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion Amendment of 83 Ill. Adm. Code 551	: : : :	02-0844

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY TO REBUTTAL OF PEOPLES ENERGY SERVICES CORPORATION TO STAFF'S REPLY TO RESPONSES TO STAFF'S SECOND COMMENTS REGARDING FIRST NOTICE OF RULEMAKING

NOW COMES the Staff of the Illinois Commerce Commission ("Staff" and "Commission"), by and through its attorneys, and replies to the Rebuttal of Peoples Energy Services Corporation to Staff's Reply to Responses to Staff's Second Comments Regarding First Notice of Rulemaking ("PE Services" and "PE Services' Rebuttal").

(The Staff of the Illinois Commerce Commission's Comments Regarding First Notice of Proposed Rulemaking ("Staff's First Comments"), the Staff of the Illinois Commerce Commission's Second Comments Regarding First Notice of Proposed Rulemaking ("Staff's Second Comments"), the Response of Peoples Energy Services Corporation to Staff's Second Comments Regarding First Notice of Rulemaking ("PE Services' Response"), the Staff of the Illinois Commerce Commission's Reply to Responses to Second Comments Regarding First Notice of Proposed Rulemaking ("Staff's Reply"), and PE Services' Rebuttal all relate to 83 Ill. Adm. Code 551, "Certification of Alternative Gas Suppliers" ("Part 551").)

Staff disagrees with PE Services regarding “Undue Hardship on AGS.”

In a change of position from PE Services’ Response, PE Services states that “PE Services does not object to revenue forecasting” Staff proposes for 83 Ill. Adm. Code 551.80, “Financial Qualifications” and 551.140, “Financial Reporting Requirements[.]” However, PE Services contends that “the proposed requirements are not necessitated by Article 19 or to protect consumers and are, therefore, an undue hardship.” It “objects to the regulation” and “being subject to an administrative body’s review of the forecasting accuracy.” (PE Services’ Rebuttal at 2.)

Staff still disagrees that the revenue-forecasting requirement causes undue hardship to an alternative gas supplier (“AGS”). The proposed revenue-forecasting requirement is very limited in scope. It only applies when an AGS purchases or expects to purchase customer accounts from another AGS. An AGS is not required to forecast its success at luring customers from an incumbent utility or other AGS through contract terms it hopes customers deem advantageous.

The benefits of Staff’s revenue-forecasting proposal outweigh any perceived hardship an AGS might experience. Staff’s proposed requirements ensure AGS compliance with Subsection 19-110(e)(1) of the Public Utilities Act, which states that an “applicant must posses sufficient, technical, *financial*, and managerial resources and abilities to provide the service for which it seeks a certificate of service authority.” (Emphasis added.) Staff’s revenue-forecasting proposal assures that an AGS has sufficient financial resources to provide service to all of its customers, including significant customer purchases from another AGS. All customers benefit from the added assurance that their AGS has financial resources to serve both current and newly purchased accounts. Commission oversight ensures AGS compliance with all financial qualifications and reporting requirements, revenue-forecasting included. Staff's minimal addition to Part 551's already considerable financial-reporting requirements in no way amounts to the "undue hardship" PE Services alleges.

Staff disagrees with PE Services regarding "The Purpose of the Rulemaking."

PE Services' Rebuttal reasserts the now familiar argument that the purpose of the present rulemaking is ensuring consistency between Part 551 and Article 19 of the Public Utilities Act. As Staff's Reply explains at length, Staff's proposals maintain consistency between Part 551 and Article 19 of the Public Utilities Act. (Staff's Reply at 3-4.) Recommendations in Staff's Second Comments and Staff's Reply merely modify Part 551's financial qualifications and reporting requirements to ensure AGS compliance with Public Utilities Act Subsection 19-110(e)(1).

Staff disagrees with PE Services that "The ARES Rules Do Not Have Similar Requirements and this Change Requires Higher Financial Requirements for Similarly Situated AGS than ARES."

PE Services asserts, again, that because 83 Ill. Adm. Code 451, "Certification of Alternative Retail Electric Suppliers" ("Part 451"), does not include provisions similar to Staff's recommendations, these recommendations have no place in Part 551's AGS requirements. Once again, Staff disagrees for reasons stated in Staff's Reply. (Staff's Reply at 4-5.)

Part 451 is not currently subject to an open rulemaking. Were Part 451 under review, Staff would propose parallel Alternative Retail Electric Supplier ("ARES") changes governing customer-account purchases. Staff expects that, when Part 451 is next under review, similar financial qualifications and reporting requirements will be recommended.

PE Services would have the Commission believe that parallel AGS requirements cannot be changed unless ARES requirements are changed simultaneously or beforehand. Clearly, this approach is not always practicable. Staff reiterates that identified weaknesses in Part 551 should not continue simply because they also exist in Part 451.

Accordingly, whether or not the ARES that purchased Nicor Energy's customers was required to "show additional financial resources for those expected revenues" (PE Services' Rebuttal at 3) is irrelevant; Part 451 does not yet require this showing. Rather, AGS Dominion Resources' recent purchase of significant customer accounts from another AGS – An AGS, not an ARES, matter – prompted Staff's reevaluation of current financial qualifications and reporting requirements. In the Dominion Resources purchase Staff sought assurances, pursuant to Article 19 of the Public Utilities Act, that the AGS' financial resources would remain sufficient once the transaction closed. Staff's present proposal clarifies these required assurances in all future instances.

PE Services inaccurately claims, again, that Staff's proposal subjects an AGS to higher financial qualifications than an ARES. 83 Ill. Adm. Code 551.80(c), (d), and (f), applicable to AGSs, base financial qualifications on the greater of $500,000 or 5% of annual revenue; corresponding ARES rules (83 Ill. Adm. Code 451.320(a)(2), (3), and (5)) base them on the greater of $1 million or 10% of annual revenue. An AGS' financial requirements are half the size of an ARES' requirements.

Staff disagrees with PE Services that "The Proposed Changes Are Vague and Ambiguous."

PE Services argues that Staff's proposed changes to 83 Ill. Adm. Code 551.80 are "vague and ambiguous" and that "the new language added as Section 551.140(f) is impossible to comply with." (PE Services' Rebuttal at 4.) Specifically, PE Services argues, first, that determining "expected" revenues is impossible and, second, that account acquisitions are always consummated the day the purchase agreement is executed, making Staff's 15 days' notice requirement impossible.

The arguments are unsubstantiated and mischaracterize Staff's Reply. Staff's Reply demonstrates that the determination of expected revenue or number of accounts is not problematic for the purchasing AGS. The quantity of purchased accounts is typically a certain figure and estimates of expected revenues drive the AGS' purchase price. Regarding Staff's notice proposal, Staff reasonably expects that an AGS' customer-acquisition agreement offers at least 15 days between execution and the date customer accounts actually transfer; under any circumstances Staff considers it unlikely that the new AGS will notify acquired customers of the supplier change the day the agreement is executed.

WHEREFORE Staff respectfully requests that the Commission disregard PE Services' Response and PE Services' Rebuttal and submit the proposed amendments to Part 551 with the additions suggested in Staff's First Comments, Staff's Second Comments, and Staff's Reply as its second notice of proposed rulemaking.

Respectfully submitted,

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